MRAssociates
Advisers to Supported Housing

T - 01475 727 089
F - 07092 882 002
W - www.mrassociates.org

Kingston House,
3 Jamaica Street, Greenock,
Renfrewshire, PA15 1XX.

Can a not-for-profit body buy goods and services from its own members and directors?

Basic info

There is no reason why a not-for-profit body cannot buy goods and services on a commercial basis from its own members, directors, trustees etc. This was the conclusion of the Upper Tribunal in the case Wirral Borough Council v MF (HB) [2013] UKUT 291 (AAC). The UT's reasoning was as follows:

- It is inevitable that a not-for-profit body will have to enter into commercial transactions with suppliers who sell goods and services for profit
- There is no reason why those suppliers should not be companies or individuals who have links to the not-for-profit body, for example its members, directors or trustees or commercial companies associated with those members, directors or trustees, provided the dealings between the not-for-profit body and its suppliers are "bona fide and commercial"

What does "bona fide and commercial" mean?

This expression describes an arrangement that is:

- carried out for valid reasons in the context of a not-for-profit body, i.e. it is reasonable that the not-for-profit body should be procuring the particular service/goods in order to carry out its objectives, and
- priced at a reasonable commercial rate so that the supplier is not abusing his/her position by over-charging a not-for-profit body over which s/he is able to exercise control or influence
    - In simple terms, the not-for-profit body would not be able to obtain the service/goods at a cheaper price elsewhere

What if the not-for-profit body is paying more than it needs to for goods/services supplied by someone with close connections?

In that case the local authority might suspect that the people who run the not-for-profit body are taking a "disguised profit".